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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 25

JACK CORBETT, *et al.*,
Petitioners,

vs.

ALBERT B. CHANDLER, *et al.*,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

Raymond T. Jackson,
Emil T. Tisay,
Warren Dahm,
Union Commerce Bldg., Cleveland, Ohio,
Lowell T. Carroll,
15 Broad Street, New York, New York,
Attorneys for Respondents.
Duncan E. Nyman,
145 North High Street, Columbus, Ohio,
Attorney for Respondent,
Albert B. Chandler.
William M. Saxton,
Union Central Building, Cincinnati, Ohio,
Attorney for Respondents,
Cincinnati Baseball Club Co.,
Powell Crosley, Jr., Warren Giles.

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In the Supreme Court of the United States

OCTOBER TERM, 1952.

No. 674.

JACK CORBETT, *et al.*,

Petitioners,

vs.

ALBERT B. CHANDLER, *et al.*,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

A. OPINIONS BELOW.

The District Court did not file an opinion with its order dismissing the action. (R. 20-1.) By a *per curiam* order filed February 20, 1953 (R. 25; reported in 202 F. 2d 428), the Court of Appeals affirmed upon its opinion in *Kowalski v. Chandler, et al.*, which is reported in 202 F. 2d 413.

B. JURISDICTION.

The judgment of the Court of Appeals for the Sixth Circuit was filed on February 20, 1953. (R. 25.) The petition for certiorari was filed on March 25, 1953. Petitioner invokes the jurisdiction of this Court under Title 28, U. S. C. Secs. 1254 and 2101(c). (Pet. 9.)

C. STATUTES INVOLVED.

The pertinent parts of Sections 1 and 2 of the Sherman Act (15 U. S. C. 1, 2) and Section 4 of the Clayton Act (15 U. S. C. 15) are set forth in the Petition. (Pet. 8-9.) The Amended Complaint also alleges a violation

of Section 3 of the Sherman Act. (15 U. S. C. 3; R. 15, par. LXXII.) However, no violation of that section is claimed or asserted in the Petition, and no question thereunder is raised by Petitioners' alleged claim.

The pertinent parts of the other statutes, which are involved, are set out below.

The pertinent part of Section 6 of the Clayton Act (15 U. S. C. 17) provides:

> "The labor of a human being is not a commodity or article of commerce."

The pertinent part of Section 20 of the Clayton Act (29 U. S. C. 52) provides:

> "And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert * * * from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; * * * nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

The pertinent parts of subsections (a) and (c) of Section 13 of the Norris-LaGuardia Act (29 U. S. C. 113(a), (c)) provide:

> "(a) *A case shall be held to involve or to grow out of a labor dispute when the case involves persons* who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or *who are members of the same or an affiliated organization of employers* or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) *between one or more employers or associations of employers and one or*

more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section).

* * * * *

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."*

D. STATEMENT OF THE CASE.

Petitioner's "Statement of the Matter Involved" (Pet. 1-7) not only contains numerous assertions of alleged facts, for which no support in the record is cited, claimed or exists, but also—even more improperly—contains numerous assertions of alleged facts which purport to be, but are not, supported by the citations to the record.† The

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* In this brief all emphasis supplied unless otherwise noted.

† E.g., the following assertions of alleged facts in the Petition (a) are either not supported by any record citation or are not supported by Petitioners' record citations and (b) are not supported by any allegation in the Complaint, to wit: (1) that Corbett "is the * * * owner" of the El Paso Club (Pet. 2; R. 2, par. I; R. 12, par. LXI); (2) that Major League Clubs themselves "broadcast and telecast" their games and thereby derive "great revenues * * * from advertisers or sponsors of products" whereas such Clubs are alleged only to sell to others rights to broadcast and telecast descriptions of their games (Pet. 3; R. 4-5, pars. XIX, XXI, XXII); (3) that certain Minor Leagues "broadcast and telecast their games," play "a Little World Series" and derive

(Continued on following page)

Petition so gravely fails adequately and fairly to state the case, which is presented for review and was decided by the Court below, as to justify a denial of the Petition upon that ground alone. ***Furness, Withy & Co. v. Yang-Tsze Ins. Ass'n.*****, 242 U. S. 430, 433-4;** ***Sutter v. Midland Valley R. Co.*****, 280 U. S. 521.**

(Continued from preceding page)

large revenues from broadcasting and telecasting the latter games, whereas the only pertinent allegation is that "Minor League Clubs in the AAA and AA Leagues" sell rights to broadcast and telecast descriptions of their games (Pet. 3, R. 6, par. XXX); (4) that defendants have conspired to monopolize professional baseball in Mexico (Pet. 3); (5) that "Organized Baseball" maintains a monopoly "over radio and television for profit in interstate and foreign commerce" (Pet. 4); (6) that the player contracts give the employing club "irrevocable title or right to the player's services whether the player renews his contract or not" which "title and right" is protected or enforced by a "blacklist" and an agreement with a Mexican League (Pet. 4); (7) that the covenant for assignability in player contracts "permits" Major League Clubs to own Minor League Clubs (Pet. 4); (8) that the foregoing alleged contractual rights of employing clubs is enforced against other clubs by a "threat of blacklisting," by blacklisting and barring from the game a player, who contracts with a "blacklisted" club, and by subjecting "to blacklist and permanent expulsion" a club owner, who permits his team to play against a "blacklisted" club (Pet. 4); (9) that "it is fairly inferable" (seemingly from a bare allegation that the El Paso Club had signed four Mexican players) that appearance of the Mexican players in the El Paso Club's games would have created interest among the Mexican population in Texas and in Mexico, that it is further "fairly inferable" that this would have increased "the value of Petitioners' franchise" and would have had the "probable result" of creating an opportunity to sell rights to broadcast and telecast "petitioners' games into Mexico" with "economic gain" to Petitioners (Pet. 5); (10) that the Commissioner "secretly" made an agreement with the Mexican National League (Pet. 5); (11) that the aforesaid agreement was unknown to Petitioners "when they signed four players from" Mexican Clubs (Pet. 5-6); (12) that the authority of Chandler to make, and of Trautman to enforce, such agreement "was established by proceedings within Organized Baseball" (Pet. 6); (13) that defendants "fully ratified the agreement of Commissioner Chandler" (Pet. 6); (14) and that a Mexican administrative board allegedly made an administrative ruling which is denominated a decree of "the Mexican Courts" (Pet. 6-7).

1. The Nature and Scope of the Claim Which the Amended Complaint Purports to State.

Petitioners are El Paso Baseball Club, Inc. (a corporation hereinafter called the El Paso Club) and Jack Corbett whose joinder as a party is supported solely by an allegation that he allegedly "organized" the corporate petitioner. (R. 2, pars. I, II; R. 12, par. LI, cf. Pet. 2.) Respondents are Albert B. Chandler, individually and as Commissioner of Baseball, George M. Trautman, individually and as President of the National Association of Professional Baseball Leagues, Cincinnati Baseball Club Company (hereinafter called the "Cincinnati Club") Powell Crosley, Jr., individually and as President and owner of the Cincinnati Club, and Warren Giles, individually and as General Manager of the Cincinnati Club. The Amended Complaint (hereinafter called the "Complaint") purports to state a statutory claim for recovery of treble the damages allegedly caused to Petitioners by Respondents' alleged violation of Sections 1 and 2 of the Sherman Act.

As hereinafter appears, it is not alleged that either of Petitioners (1) is, or ever has been, engaged in the broadcasting or telecasting business or (2) is, or ever has been, engaged in giving professional baseball exhibitions in the Major Leagues or in any of the Minor Leagues except a Class C League. Consequently, Petitioners' allegations with respect to the Major Leagues and the higher classifications of Minor Leagues, including their sales of broadcasting and telecasting rights and ownership of "farm clubs," are surplusage and serve only to obscure and confuse the statement of Petitioners' alleged claim. Those allegations, which are unrelated to Petitioners' alleged claim, comprise (both in number and bulk) the greater

part of the Complaint. (R. 3-5, pars. VIII-XXIII, incl.; R. 6, pars. XXVII, XXVIII, XXX; R. 7-8, pars. XXXI-XLIV; R. 9, pars. XLVI-L; R. 11, pars. LIII-LV, LVII; R. 15, par. LXXI.)

The gist of Petitioners' alleged claim is that by an agreement, to which Respondents were allegedly parties, the El Paso Club has been restrained from inducing baseball players of Mexican nationality to breach their player contracts with Mexican Clubs and that Petitioners have thereby been prevented "from disposing of them (i.e. assigning their player contracts) for a considerable profit." (R. 12, par. LVIII; R. 13, pars. LXII-LXV; R. 14, par. LXVIII; Pet. 6.) For clarity and brevity, we shall summarize, first, the alleged background facts which relate to the claim and, second, the alleged facts which constitute the claim.

(a) *The alleged background facts which relate to the alleged claim.* "Organized Baseball," as that term is used in the Complaint, includes the two Major Leagues and the Minor Leagues which are members of a voluntary association known as the National Association of Professional Baseball Leagues (hereinafter called the "National Association"). All Major and Minor Leagues are voluntary associations. These Minor Leagues are classified and designated, in accordance with their respective standards of play, as AAA, AA, A, B, C and D Leagues. The Minor Leagues of "Organized Baseball" operate under the National Association Agreement, the Major-Minor League Agreement and the Major-Minor League Rules. (R. 3, par. XII; R. 6, pars. XXIV, XXV, XXVI.) Minor League clubs in the *AAA* and *AA* Leagues sell rights to broadcast and telecast descriptions of their games. (R. 6, par. XXX.) As hereinafter appears, Petitioners claim to have

been damaged solely as operators of a baseball club in a Class C League.

The alleged "employment agreement" among Minor Leagues and their member clubs. The Minor Leagues and their member clubs entered into an agreement with respect to certain of the terms upon which they would employ players. This alleged agreement provided that all Minor League clubs shall use a standard form of player contract and that this contract shall contain covenants which make the contract assignable and grant to the employing club or its assignee an option to renew the contract for another season. (R. 6, par. XXIX; R. 10, par. LI; R. 11, par. LIV; R. 15, par. LXX.) The covenant for renewal is interchangeably described as an "option" or a "reserve clause" or a "right of reservation" (e.g., R. 7, pars. XXXI, XXXIII, XXXV; R. 10, pars. LI, LII; R. 11, par. LVI; R. 15, pars. LXX, LXXI.)

From an allegation that in 1946 and 1947 one or more Major League players were threatened with "blacklisting" or were "blacklisted" (i.e., placed on an ineligible list) for breaching their player contracts, Petitioners seemingly imply an allegation that a Minor League player, who breaches his player contract (including the option therein to renew for another season), may be placed on a "blacklist" (i.e., an ineligible list). (R. 9, par. L; Pet. 4.)

Petitioners also assert that a club owner (i.e., a member of a League), who does not respect (i.e., induces a breach of) a player contract held by another club in professional baseball, may also be "blacklisted" (i.e., placed on an ineligible list) and that a player cannot contract with, and another club may not permit its team to play against the team of, a club which has been placed on an ineligible list for inducing a player to breach his player

contract. (Pet. 4.) The assertions summarized in this paragraph are either unsupported by Petitioners' record citations or are made without supporting citation to the record; and no allegations in the Complaint support such assertions. However, even if the terms of the alleged agreement with respect to the employment of players in Minor Leagues be assumed to include those in the foregoing unpleaded and unsupported assertions, neither the nature nor the legal effect of such agreement would be changed. For brevity, the terms of the alleged agreement are hereinafter collectively designated as the "Employment Agreement."

The alleged "Mexican agreement." In early 1949, Respondent Chandler (presumably, although not alleged to have been, acting as Commissioner of Baseball) allegedly entered into an agreement with the Mexican National League under which the clubs of that League and the clubs of the Minor Leagues would be reciprocally bound to respect the "right of reservation" (i.e., the option to renew for another season) in their respective player contracts, and the Respondent Trautman "abided by" the agreement. Notice of this alleged agreement was not, it is alleged, given to "the owners of Minor League Clubs" until March 19, 1949. (R. 12, pars. LVIII, LIX; R. 13, par. LXII.) For brevity, the foregoing alleged agreement is hereinafter sometimes designated as the "Mexican Agreement."

(b) *The alleged events which constitute Petitioners' claim.* Sometime between the close of the 1948 baseball season and the opening of the 1949 baseball season, Petitioner El Paso Club, was incorporated and became a member of the Class C Arizona-Texas League. (R. 12, par. LXI.)

At some unspecified date or dates, the El Paso Club entered into player contracts for the 1949 season with four players of Mexican nationality, each of whom had played during the 1948 season for clubs in the Mexican League under player contracts which contained "the right of reservation" or option to renew, and had "endeavored to sign" another Mexican player. (R. 13, par. LXIII.) The Mexican Agreement had not been "officially promulgated" when Petitioner, El Paso Club, was "organized" and became a member of the Class C Arizona-Texas League.* (R. 12, par. LXI.)

After a formal hearing, Respondent Trautman, acting as President of the National Association, ruled that the El Paso Club, in contracting with the foregoing players, had induced them severally to breach their respective contracts with the Mexican Clubs, that is, to breach the unexpired options to renew in their respective player contracts. Upon an appeal by the El Paso Club, this ruling was upheld by the Executive Committee of the National Association. (R. 13, pars. LXIV, LXV.)

As the result of the enforcement of the agreement that the National Association and the Mexican League Clubs would reciprocally refrain from inducing their respective players to breach their player contracts, the El Paso Club "lost the services of the four Mexican players," was "deprived of the opportunity" to induce other Mexican players to contract with the El Paso Club in breach of

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* Significantly, Petitioners do not allege that the El Paso Club entered into player contracts with the four Mexican Nationals before the Mexican Agreement was "officially promulgated." However, assuming that the enforcement of the Mexican Agreement without earlier notice to the El Paso Club were illegal or violated its rights, the antitrust laws do not create a remedy for such wrongs. *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 483-4, 513; *Hunt v. Crumboch*, 325 U. S. 821, 826.

their contracts with Mexican Clubs and was "prevented from disposing of them (i.e., the Mexican players) for a considerable profit." (R. 14, par. LXVIII.) As a further result the Petitioners have allegedly been deprived "of their rights in Organized Baseball in the United States and its Territories" to their damage in the amount of $100,000; and Petitioners seek to recover treble such alleged damages in a statutory action under the anti-trust laws. (R. 16.)

2. Proceedings in the Courts Below.

In the District Court Respondents moved for an order dismissing the action upon the separate and independent grounds (1) that the District Court lacks jurisdiction over the subject matter of the action and (2) that the Complaint fails to state a claim upon which relief can be granted. (R. 17-18; R. 19-20.) Even if the District Court had jurisdiction over the subject matter of the action and the Complaint had otherwise stated a claim upon which relief could be granted, the reasonableness of either the "Employment Agreement" or of the "Mexican Agreement" could not have been judged upon a motion addressed to the Complaint but only upon evidence with respect to their history, purpose and result. *Chicago Board of Trade v. United States*, 246 U. S. 231, 238. Consequently, the question of the reasonableness of either of the foregoing Agreements was not presented and was not in issue in either court below and is not in issue on the petition for certiorari.

The District Court dismissed the action upon both grounds of Respondents' motions; and the Court of Appeals affirmed the order of the District Court. (Pet. 9; R. 20-1, 25.)

II. QUESTION PRESENTED.

Petitioners correctly state that the *sole* question, which the Petition presents, "is whether the United States District Court has jurisdiction of the subject matter of this action." (Pet. 12.)

However, Petitioners also erroneously assert that the question presented "is whether professional baseball is subject to the Federal Anti-Trust Statutes" (Pet. 1) and whether "the activities and organization of professional baseball as set forth in" the Complaint are "subject to the Federal Anti-Trust Laws." (Pet. 12.) The case at bar is a private statutory action in which Petitioners can put in issue only the validity of those alleged restraints by which they were allegedly damaged. The great bulk of "the activities and organization of professional baseball as set forth in" the instant Complaint, are not alleged to have affected or damaged the Petitioners in any way; and the much broader question or questions, which are embraced in the foregoing assertions of Petitioners, are not and cannot be presented by the Petition. Instead, the only question, which the Petition presents, is whether a complaint, which alleges that Petitioners have been damaged solely by the alleged "Employment Agreement" and alleged "Mexican Agreement," states a private statutory claim under the antitrust laws, over the subject matter of which the District Court has jurisdiction.

The Petition presents for review only one of the grounds of the judgment below. This raises the further question whether Petitioners have any interest or standing to maintain, in this Court, a petition for issuance of a writ of certiorari.

F. REASONS ASSIGNED BY PETITIONERS FOR ALLOWANCE OF THE WRIT.

In substance, the reasons assigned by Petitioners for allowance of the writ are:

1. The decision of the Court of Appeals in this case is in conflict with the decision of the Court of Appeals for the Second Circuit in *Gardella v. Chandler*, 172 F. 2d 402. (Pet. 12.)

2. In this case, the Court of Appeals "decided the question of the scope of the Commerce Clause in a way probably in conflict with the applicable decisions of this Court."

3. The decision of the Court of Appeals is in conflict with an alleged belief of the "Congress of the United States" that "organized professional baseball is not beyond the federal jurisdiction" (Pet. 12-13).

For brevity and clarity, we shall reply in inverse order to the first two reasons assigned by Petitioners. After replying to the third reason assigned by Petitioners, we shall state briefly other propositions, each of which (except Petitioners' lack of standing to petition for review) was presented in the court below and each of which in our opinion would also require affirmance of the judgment and a denial of the Petition.

ARGUMENT.

I. THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT.

A. The Decision Below Squarely Conforms With the Decision of this Court in Federal Baseball Club v. National League, 259 U. S. 200.

The scope and grounds of, and the principles underlying, the decision of this Court in *Federal Baseball Club v. National League*, 259 U. S. 200 (hereinafter called the "Federal Club case") have been analyzed at pp. 13-18 of Respondents' brief filed in opposition to the petition for certiorari now pending before this Court in *Kowalski v. Chandler, et al.*, Supreme Court Docket, October Term 1952, No. 668. Since the respective parties in the *Kowalski* case and the case at bar are represented by the same counsel, we rely upon that analysis of the *Federal Club* case to avoid burdening the Court with unnecessary duplication.

The alleged restraints upon the employment of players, which were involved in the *Federal Club* case, were much more numerous than, but included all of, those alleged in the case at Bar, and, for brevity, hereinbefore designated as the "Employment Agreement." (Cf. Resp. Br. *Kowalski* case, pp. 14-5; *supra*, pp. 7-8.) Under the alleged "Mexican Agreement," it was agreed that clubs in the Mexican League and in the minor leagues would reciprocally respect, and not induce players to breach, their respective player contracts. Thus, the Mexican Agreement merely makes applicable to the relations between clubs of the Mexican League and clubs of the Minor Leagues, one of the provisions of the "Employment Agreement" among the Minor League clubs. The effect is the same as, although narrower than, when an additional

Minor League joins the National Association. Manifestly, the fact that the Mexican Agreement made applicable to the relations between clubs of the Mexican League and clubs of the Minor Leagues, one of the terms of the Employment Agreement governing the relations among Minor League clubs, does not present a factual situation which differs significantly or at all from that presented in the *Federal Club* case.

Since the alleged restraints embodied in the Employment Agreement and in the Mexican Agreement are directed to the employment of players in local professional baseball exhibitions and do not relate to, or affect, any interstate or international activities or commerce, the supplementing of the Employment Agreement by the Mexican Agreement could not bring such restraints within the field of the Sherman Act or affect the applicability of the *Federal Club* case.

Petitioners seemingly advance a curious contention that, although such an agreement among all clubs giving baseball exhibitions in the United States does not violate the Sherman Act, the inclusion of any foreign clubs in the agreement does violate that Act. Manifestly, the legality of an alleged restraint under the Sherman Act does not depend upon whether the commerce restrained is interstate commerce or foreign commerce.

B. The Decision Below is Not in Conflict With Any Decision of This Court Cited by Petitioners.

Petitioner asserts that the court below "decided the question of the scope of the commerce Clause in a way probably in conflict with the applicable decisions of this Court." (Pet. 12.) It would be sufficient to point out that the question presented does not involve a determination

of the limits of congressional authority under the commerce clause but, instead, concerns only the scope of the Sherman Act. (Resp. Br. *Kowalski v. Chandler*, Supreme Court Docket, October Term 1952, No. 668, p. 19.)

In support of the foregoing assertion, Petitioners cite only *Lorain Journal v. United States*, 342 U. S. 143. (Pet. 11.) In that case, this Court applied the long established principle, which was fully recognized in the *Federal Club* case, that an unreasonable restraint of interstate commerce does not escape the prohibitions of the Sherman Act because the means utilized to effect the restraint of interstate commerce were local activities or local restraints. (l. c. 149-50; Resp. Br. *Kowalski v. Chandler*, Supreme Court Docket, October Term 1952, No. 668, pp. 19-20.)

The giving of Professional Baseball exhibitions is an inherently local activity. Local restraints, even though assumed to be unreasonable at common law and under the Sherman Act, do not violate the Sherman Act unless they exert an economic effect which substantially restrains interstate or foreign commerce. *Wickard v. Filburn*, 317 U. S. 111, 125; *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 119. The only interstate activities in which the Minor Leagues or clubs involved in Petitioners' claim engage, are the incidental interstate travel of club personnel and transportation of baseball equipment. It is not alleged, and could not truthfully be alleged, that any of these interstate activities are reduced, impeded, restrained or in any way affected by the Employment Agreement or the Mexican Agreement.

C. No Intervening Changes Relating to the Giving of Professional Baseball Exhibitions Have Made the Federal Club Case Inapplicable to the Case at Bar.

Petitioners contend that the *Federal Club* case is inapplicable to the case at bar because some baseball clubs now sell rights to transmit descriptions of their games by radio and television as well as by telegraph. (Pet. 11, 14-15.) If this action involved a situation where purchasers of rights now also utilized radio and television as well as telegraph to transmit descriptions of baseball exhibitions *given by the Leagues or clubs involved*, that fact would not render the *Federal Club* case inapplicable or permit any different decision under the sound principles underlying that decision. (Resp. Br., *Kowalski v. Chandler*, Supreme Court Docket, October Term 1952, No. 668, pp. 23-5.) However, Petitioners allege only that clubs in the Major Leagues and clubs in the Class AAA and AA Minor Leagues sell rights to broadcast and telecast descriptions of their games. (R. 4-5, par. XIX, R. 6, par. XXX.) Petitioners claim to have been damaged solely as operators of a Class C Minor League Club. Consequently, this alleged ground for distinguishing the *Federal Club* case is wholly without factual basis in the case at bar.

Petitioners also cryptically assert that Major League Clubs are permitted to own Minor League Clubs or Farms. (Pet. 4.) If, contrary to the fact, such a circumstance were otherwise material, Petitioners do not allege that they have been damaged in any way by such ownership.

II. THE DECISION IN GARDELLA v. CHANDLER (C. C. A. 2) 172 F. 2d 402, IS WHOLLY INAPPOSITE TO THE CASE AT BAR; AND MANIFESTLY, THERE IS NO CONFLICT BETWEEN THAT DECISION AND THE DECISION BELOW.

1. In *Gardella v. Chandler*, 172 F. 2d 402 (hereinafter called the "Gardella case"), the plaintiff was a Major League baseball player who had been placed on an ineligible list for breaching his player contract with a Major League club popularly known as the New York Giants. The plaintiff in that case brought an action for treble damages, under the federal anti-trust laws, against the New York Giants, the Baseball Commissioner, the Presidents of the National and American Leagues and the President of the National Association and alleged that the Major Leagues and their member clubs (including the New York Giants) sold rights to broadcast and telecast descriptions of their games in interstate commerce.

In the case at bar, the Petitioners' claim is solely that they have been damaged as the operators of a baseball club in the Class C Arizona-Texas Minor League. There is no allegation that Petitioners, any other member club of that League (or indeed that any member club of any Class A, B, C or D Minor League) ever sold rights to broadcast or telecast descriptions of any of their games. Petitioners allege only that the Major Leagues, their member clubs and the Clubs in the AAA and AA Minor Leagues sell such rights. (R. 4-5, pars. XIX-XXII; R. 6, par. XXX.) Petitioners do not allege that the sale of such rights by the Major Leagues, by their member clubs or by Class AAA and AA Clubs, in any way injured or affected Petitioners; and these activities of those clubs are wholly unrelated to Petitioners' alleged claim.

The alleged facts with respect to the point upon which Petitioners claim the decision in the *Gardella* case to be in conflict with the decision below, are in no way involved in the case at bar; and manifestly, there can be no conflict between the decisions within the meaning of Supreme Court Rule 38, par. 5(b).

2. The purpose of, and the principle underlying the foregoing Rule, is to secure uniformity in Federal law by resolving conflicts between Circuits upon substantial principles of substantive law or rules of civil procedure, which have not been authoritatively settled by this Court. The Judges in the *Gardella* case expressed divergent views in three reciprocally conflicting opinions in which no two of the Judges agreed upon, or laid down, any substantial principle of substantive law or rule of procedure. (Resp. Br. *Kowalski v. Chandler*, Supreme Court Docket, October Term 1952, No. 668, pp. 25-8.)

In a subsequent case, in which the two Judges who voted to remand the *Gardella* case also sat, one of them stated, in a unanimous opinion, that all members of the Court agreed "that the bare allegation in a complaint that the defendants make contracts with broadcasting and television companies will not support the jurisdiction of the court." *Martin v. National League Baseball Club* (C. C. A. 2), 174 F. 2d 917, 918. In the case at bar, there is not even a "bare allegation" in the Complaint that any Minor Leagues or Minor League clubs, the activities of which are in any way related to Petitioners' alleged claim, ever sold rights to broadcast or telecast descriptions of their games.

3. The decision below squarely conforms with the decision of this Court in the *Federal Club* case. The principles of law involved have been authoritatively settled by this Court; and it is wholly unnecessary to grant certiorari in order to accomplish the purpose of the rule. A

denial of the Petition upon the authority of the *Federal Club* case will resolve such doubt, if any, as exists among any of the Judges of the Second Circuit with respect to the application of that decision.

III. PETITIONERS' CONTENTION, THAT THE DECISION BELOW IS IN CONFLICT WITH AN ALLEGED BELIEF OF THE CONGRESS, IS WITHOUT BASIS IN FACT OR LAW; AND SUCH A CONFLICT, IF IT EXISTED, WOULD NOT BE A GROUND FOR ISSUING THE WRIT.

The third reason assigned for allowance of the writ is that the decision below conflicts with an alleged belief of the "Congress of the United States." (Pet. 12-3.) If this contention had any factual basis, it would not constitute a ground for allowing the writ. However, the reason so assigned is also without factual basis.

1. Manifestly a view expressed in a report of a *congressional subcommittee* does not constitute a view of *"the Congress of the United States."*

2. The view of a House subcommittee, "that the Congress has jurisdiction to investigate and legislate on the subject of professional baseball," does not conflict either with the decision in the *Federal Club* case or with the decision below. It may be assumed that the Congress can, if it so desires, regulate any interstate activities, in which baseball clubs and their personnel engage, and can also regulate their intrastate activities, if and to the extent that such regulation should be found necessary or appropriate to protect interstate commerce. *Wickard v. Filburn* (1942), 317 U. S. 111, 123-5; *NLRB v. Jones & Laughlin Steel Corp.* (1937), 301 U. S. 1, 29-32. However, the existence of that power does not convert the inherently local baseball games into interstate activities or into trade or commerce or bring within the scope of the

federal anti-trust laws alleged restraints, which relate to the giving of local baseball exhibitions and do not affect any interstate trade or commerce.

As a supposed argument *in terrorem*, Petitioners baldly assert that (1) unless the Sherman Act is held applicable to the giving of local baseball exhibitions and (2) unless, by some *tour de force*, the giving of such exhibitions is held to be "trade or commerce" and not a "sport," no acts, in which those giving professional baseball exhibitions could conceivably engage, would come within the scope of the Sherman Act or within the power of the Congress under the commerce clause. (Pet. 17-19.) Petitioners do not attempt to support these assertions either by legal principles or by authority. They are contrary to the decisions cited by Respondents and are sheer nonsense.

IV. ASSUMING ARGUENDO THAT THE RESPONDENTS' ACTIVITIES, WHICH ARE INVOLVED IN THE CASE AT BAR, ARE INTERSTATE TRADE OR COMMERCE, THE AMENDED COMPLAINT DOES NOT STATE A CLAIM.

A. Agreements or Restraints Involving Employment Services or Labor Competition (as Distinguished from Consumer Services and Commercial Competition) Are Not Restraints of "Trade or Commerce" under the Sherman Act.

The courts have uniformly held that agreements or restraints involving employment services or labor competition (as distinguished from consumer services and commercial competition) are not within the economic area covered by the Sherman Act. *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 495-497; *Schatte v. International Alliance, etc.* (C. A. 9), 182 F. 2d 158, 167; *Conference of Studio*

Unions, etc. v. Loew's Inc. (C. A. 9), 193 F. 2d 51, cert. den., 342 U. S. 919; *United States v. Gold* (C. C. A. 2), 115 F. 2d 236, 238; *United Brick & Clay Workers v. Robinson Clay Products Co.* (N. D. Ohio), 64 F. Supp. 872, 874; *United States v. San Francisco Electrical Contractors Association* (N. D. Cal), 57 F. Supp. 57, 60-1.

The subject of Petitioners' Complaint is the enforcement by the National Association (of which the El Paso Club's League was a member) of agreements with respect to terms and conditions upon which clubs of the Association's member Leagues would employ baseball players. Such a claim is clearly within the principle of the foregoing cases.

In a long line of decisions, it has been held that an association of employers may enter into, and enforce against its members, agreements with respect to the terms and conditions upon which its members will employ labor without violating State anti-trust statutes or the common law against illegal restraints of trade.* While some of the

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* *Hunt v. Riverside Club*, 140 Mich. 538, 104 N. W. 40 (Association of plumbers fixed wages of labor); *State v. Employers of Labor*, 102 Neb. 768, 169 N. W. 717 (Association of all employers in Omaha combined to force open shop); *Trade Press Publishing Co. v. Moore*, 180 Wis. 449, 193 N. W. 507 (All Milwaukee newspaper publishers agreed to force open shop); *American Cloak & Suit Mfrs. Ass'n. v. Brooklyn Ladies Garment Mfrs. Ass'n.*, 143 Misc. Rep. 319, 255 N. Y. Supp. 614 (Employers association to create and enforce labor standards); *Associated Hat Mfrs. v. Baird-Unteidt Co.*, 88 Conn. 332, 91 Atl. 373 (Holding manufacturers association which forced open shop did not violate Sherman Act or common law); *Androff v. Building Trades Employers Ass'n.*, 83 Ind. App. 294, 148 N. E. 203 (Association limiting employees pay); *Williams v. Quill*, 277 N. Y. 1, 12 N. E. 2d 547 (Transit employers agreed to force closed shop); *Atkins v. W. & A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074 (Association intimidating and excluding certain workers); *Forstmann & Huffmann Co. v. United Front C. of T. Workers*, 99 N. J. Eq. 230, 237, 133 Atl. 202, 204, 205; *Goldfield Consol. Mines Co. v. Goldfield M. U. No. 220* (C. C. Nev.), 159 Fed. 500, 517, 518 (members of association combined to reduce wages).

cases (cited in the footnote) were decided under the common law and some under state anti-trust statutes embodying the common law principle, all support the proposition; for it has long been settled that the Sherman Act prohibits only those restraints or monopolies which were unenforceable or illegal at common law. *Apex Hosiery Co. v. Leader* (1940), 310 U. S. 469, 498; *Standard Oil Co. v. United States* (1911), 221 U. S. 1, 58.

B. Neither the Employment Agreement Nor the Mexican Agreement Caused Any Injury to the Public.

The private statutory claim for treble damages under the anti-trust laws was created to induce private persons to aid in the enforcement of the Act and is subordinate and incidental to the protection of the public. To state a private claim for recovery of treble damages under the anti-trust laws, a complaint must allege facts which, if proved, would establish substantial detriment to the public. *Shotkin v. General Electric Co.* (C. A. 10), 171 F. (2d) 236, 238-9; *Feddersen Motors v. Ward* (C. A. 10), 180 F. (2d) 519, 521-2; *Glenn Coal Co. v. Dickinson Fuel Co.* (C. C. A. 4), 72 F. (2d) 885, 889; *Citizen Pub. Co. v. Merchants & Manufacturers Assn.* (D. C. D. of C.), 83 Fed. Supp. 994, 997.

It is not alleged in, and cannot be inferred from, the Complaint that either the Employment Agreement or the Mexican Agreement caused any damage to the public. It cannot be inferred from the Complaint that the alleged restraints against inducing breaches of contract have decreased the quantity or diminished the quality of professional baseball exhibitions, have caused any increase in the price charged to the public or have damaged the public in any other way.

C. Petitioners Are Barred From Relief By the Doctrine of In Pari Delicto.

One who has participated or acquiesced in an illegal conspiracy or combination in violation of the anti-trust laws cannot recover damages from his co-conspirators. *Harriman v. Northern Securities Co.*, 197 U. S. 244, 295-6; *Northwestern Oil Co. v. Socony-Vacuum Oil Co.* (C. C. A. 7), 138 F. (2d) 967, 971, cert. den. 321 U. S. 792; *Eastman Kodak Co. v. Blackmore* (C. C. A. 2), 277 Fed. 694, 700; *Bluefields Steamship Co. v. United Fruit Co.* (C. C. A. 3), 243 Fed. 1, error dismissed 248 U. S. 595; *First National Pictures v. Robison* (C. C. A. 9), 72 F. (2d) 37, 40, cert. den. 293 U. S. 609; *Mid-West Theatres Co. v. Co-operative Theatres* (D. C. Mich.), 43 F. Supp. 216; *Tilden v. Quaker Oats Co.* (C. C. A. 7), 1 F. (2d) 160, 166-7; *Spencer v. Sun Oil Co.* (D. C. Conn.), 94 F. Supp. 408, 412.

Petitioners seek to recover the profits which they allegedly could have made by selling the contracts of players whom Petitioners had induced, or hoped to induce, to breach their player contracts with clubs of the Mexican National League. Petitioners could have sold such contracts *only* if they contained the provisions and were protected by the terms of the Employment Agreement. Petitioners allege that they were damaged by being deprived of "their rights in Organized Baseball." If, as Petitioners claim, the provisions of the player contracts and of the Employment Agreement were void and "Organized Baseball" is a monopoly or illegal conspiracy, Petitioners could neither reap the fruits of selling such player contracts or of exercising "rights in Organized Baseball" without being parties to the alleged monopoly or illegal conspiracy.

D. The Subject Matter of Petitioners' Alleged Claim is Specifically Exempted From the Anti-trust Laws By Provisions of the Clayton and Norris-LaGuardia Acts.

Petitioners' alleged claim is based entirely upon the Employment Agreement and the Mexican Agreement (*supra*, pp. 7-8), both of which relate wholly to the employment of persons to supply personal services or labor. Accordingly the Petitioners' alleged claim is specifically exempted from the anti-trust laws by the provisions of the Clayton and Norris-LaGuardia Acts. (Respondents' Brief, *Kowalski v. Chandler, et al.*, Supreme Court Docket, October term 1952, No. 668, pp. 36-9.) It will be noted that the alleged claim is a labor dispute between an association of employers and an employer-member of that association and falls within the specific language of subsection (a), (2) of section 13 of the Norris-LaGuardia Act quoted at pages 2-3, *supra*. (29 U. S. C. 113 (a), (2).)

E. For Separate Reasons, the Complaint Fails to State a Claim Upon Which Relief Can Be Granted to Petitioner Corbett.

An officer, director, stockholder, employee or creditor of a corporation cannot maintain an action to recover treble the damages proximately caused to his corporation by an alleged violation of the federal anti-trust laws or to recover treble the damages which he claims to have been indirectly inflicted upon him by the wrong to his corporation. *Fleitmann v. Welsbach Street Lighting Co.*, 240 U. S. 27; *Securities Co. v. Copper Co.*, 244 U. S. 261; *Asbestos Co. v. Johns-Manville Co.* (D. C. N. Y.), 30 F. Supp. 389, 32 F. Supp. 731, aff'd. (C. C. A. 2) 113 F. (2d) 114; *Meyer v. Kansas City etc. Ry. Co.* (C. C. A. 2), 84 F.

(2d) 411, cert. den. 299 U. S. 607; *Roseland v. Phister Mfg. Co.* (C. C. A. 7), 125 F. (2d) 417; *Gerli v. Silk Ass'n.* (D. C. N. Y.), 36 F. (2d) 959; *Corey v. Ice Co.* (D. C. Mass.), 207 Fed. 459; *Loeb v. Eastman Kodak Co.* (C. C. A. 3), 183 Fed. 704.

The only allegations in the Complaint, which relate to Petitioner Corbett, are that he "organized" the corporate Petitioner (El Paso Club) and that he was directed to pay a fine levied upon the El Paso Club (presumably as an officer or agent of that club) for "conduct detrimental to Baseball" in the case of a player not involved in this action but that such fine was remitted. (R. 12, par. LXI; R. 14, par. LXVI.) While an allegation that he had been indirectly damaged by the alleged wrong to the corporate Petitioner would not state a statutory claim in his favor, the Complaint contains no such allegation.

F. For Separate Reasons, the Complaint Fails to State a Claim Upon Which Relief Can Be Granted Against Respondents Cincinnati Club, Crosley and Giles.

None of the allegations of the Complaint with respect to the Cincinnati Club, Crosley or Giles (pars. XXXV-XXXIX, R. 7-8) are in any way relevant to the Petitioners' claim, which is based on the alleged loss of services of four players, on the alleged deprivation of an opportunity to contract with additional players upon whose services Mexican clubs held unexpired contracts or options, and upon the allegation that actions of Trautman and Chandler prevented the Petitioners from disposing of the contracts of the aforesaid four players for a considerable profit. (*supra*, pp. 8-10.) There is no allegation that the Cincinnati Club, Giles or Crosley engaged in any

acts designed or intended to affect, or having any effect upon, the relations between the Petitioners and the aforesaid four players; nor is there any allegation that said three Respondents engaged in any act resulting in alleged damage to Petitioners. It follows that the Complaint does not in any event state a claim upon which relief could be granted against them.

V. PETITIONERS HAVE NO LEGAL INTEREST OR STANDING TO MAINTAIN THEIR PETITION FOR WRIT OF CERTIORARI.

No one has a right or standing to invoke a judicial determination of a question where and when its judicial determination will not affect his legal rights. Upon the same principle, Petitioners have no right or standing to maintain a petition for a writ of certiorari to review one of the two grounds upon which the judgment below rests. Even if the court below had erred in holding that the District Court lacked jurisdiction over the subject matter of the action, the judgment below would still be fully supported by the holding that the Complaint fails to state a claim upon which relief can be granted; and no legal interest of Petitioners could be affected by a review of the only question which the Petition presents. In substance and effect, the Petition prays for an advisory opinion.

CONCLUSION.

For each and all of the reasons hereinbefore stated, the Petition should be denied.

Respectfully submitted,

RAYMOND T. JACKSON,
BENJ. F. FIBBY,
WARREN DAANE,
Union Commerce Bldg., Cleveland, Ohio,
LOUIS F. CARROLL,
15 Broad Street, New York, New York,
Attorneys for Respondents.

HERMAN R. TINGLEY,
145 North High Street, Columbus, Ohio,
Attorney for Respondent,
George M. Trautman.

WALTER M. SIEGEL,
Union Central Building, Cincinnati, Ohio,
Attorney for Respondents,
Cincinnati Baseball Club Co.,
Powell Crosley, Jr., Warren Giles.